

HOUSE BILL 1061
By McCord

AN ACT to amend Tennessee Code Annotated, Title 7, Chapter 82; Title 11; Title 59; Title 60; Title 68 and Title 69, relative to the environment.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 69-3-109, is amended by deleting such section in its entirety and substituting instead the following language:

(a) (1) Whenever the commissioner has reason to believe that a violation of any provision of this part or regulation promulgated thereunder or orders issued pursuant thereto has occurred, is occurring, or is about to occur, the commissioner may cause a written complaint to be served upon the alleged violator or violators.

(2) The complaint shall specify the provision or provisions of this part or regulation or order alleged to be violated or about to be violated, the facts alleged to constitute a violation thereof, may order that necessary corrective action be taken within a reasonable time to be prescribed in such order, and shall inform the violators of the opportunity for a hearing before the board.

(3) Any such order shall become final and not subject to review unless the person or persons named therein request by written petition a hearing before the board, as provided in § 69-3-110, no later than forty-five (45) days after the date such order is served; provided, that the

board may review such final order on the same grounds upon which a court of the state may review default judgments.

(b) (1) Whenever the commissioner, with the concurrence of the governor, finds that an emergency exists imperatively requiring immediate action to protect the public health, safety, or welfare, or the health of animals, fish, or aquatic life, or a public water supply, or recreational, commercial, industrial, agricultural, or other reasonable uses, the commissioner may, without prior notice, issue an order reciting the existence of such an emergency and requiring that such action be taken as the commissioner deems necessary to meet the emergency.

(2) If the violator fails to respond or is unable to respond to the commissioner's order, the commissioner may take such emergency action as the commissioner deems necessary, or contract with a qualified person or persons to carry out the emergency measures. The commissioner may assess the person or persons responsible for the emergency condition for actual costs incurred by the commissioner in meeting the emergency.

(3) Furthermore, the commissioner is empowered to establish programs and procedures to qualify the state for emergency funding from the federal government.

(c) Except as otherwise expressly provided, any notice, complaint, order, or other instrument issued by or under authority of this part may be served on any person affected thereby personally, by the commissioner or any person designated by the commissioner, or such service may be made in accordance with Tennessee statutes authorizing service of process in civil actions. Proof of service shall be filed in the office of the commissioner.

SECTION 2. Tennessee Code Annotated, Title 69, Chapter 3, Part 1, is amended by adding the following new section:

Section _____. During any period in which the federal government is unable to exercise its responsibilities relative to effluents because the federal government does not have adequate funds to operate the appropriate regulatory agencies, the state shall assume all such responsibility until such time as the federal government is able to exercise its responsibilities.

SECTION 3. This act shall take effect July 1, 2003, the public welfare requiring it.